IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6922 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

D T MAKWANA,

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6922 of 1991

MR RN SHAH for Petitioner

MR UDAY BHATT, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 24/01/2003

ORAL JUDGEMENT

1. The petitioner, who had retired from 31st July 1980, challenges the action of the respondents of fixing his pension of Rs.514=00 plus T.I. and ordering recovery

of Rs.9,434=35 which is done by giving effect to the order of punishment dated 17-4-1978, by which three increments were ordered to be withheld with future effect.

2. There is no dispute about the fact that the validity of the above punishment order was examined in the earlier petition filed by the petitioner being Special Civil Application No. 1176 of 1980, which came to be decided by this Court on 22-8-1990. By that order, the High Court, observing that it was essential for the authority to consider the fact that the petitioner was on the verge of his retirement and that, such order of penalty with future effect would take away sizeable sums from his pension, reduced the penalty imposed on the petitioner by directing that the punishment of stoppage of three increments as imposed by the disciplinary authority under the impugned order be modified to the extent that the stoppage of three increments shall not operate beyond the date on which he retires i.e. 31st July 1980. In other words, stoppage of three increments of the petitioner was to have no future effect beyond 31-7-1980. Inspite of such clear directions that the penalty was modified from stoppage of three increments with future effect to stoppage of three increments without any future effect beyond 31-7-1980 so that the petitioner may not suffer in getting his full pension, the government, by communication dated 12th August 1991, has taken up a stand that the order of stoppage of increments would have adverse impact on the fixation of the petitioner's pension. Thus, the pension of the petitioner is fixed and given with the adverse future impact of the stoppage of three increments though the High Court had specifically modified the penalty by directing that the stoppage of three increments will not have any future effect beyond his retirement. The order of stoppage of three increments without future effect beyond his retirement would mean that it ought to have no impact on the fixation of pension of the petitioner.

3. The respondents are, therefore, directed that the pension of the petitioner be re-fixed within one month from today, without taking into account the order of stoppage of three increments for the period beyond the date of his retirement i.e. 31-7-1980, and fix his pension as if no such order was there so that there is proper compliance of the order of the High Court, which is to the effect that there should be no future effect of such order of punishment, including any future effect, on the fixation of the pension of the petitioner. Rule is made absolute accordingly with no order as to costs.

[R.K.ABICHANDANI, J.]

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